

THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

GORDON HEMPTON,

Plaintiff,

v.

POND5, INC., A DELAWARE  
CORPORATION; AND POND5 USER  
CKENNEDY342, A CORPORATION OR  
INDIVIDUAL OF TYPE UNKNOWN,

Defendants.

No.: 3:15-cv-05696-L

**DECLARATION OF LARRY E.  
ALTENBRUN IN SUPPORT OF  
POND5, INC.'S OPPOSITIONS TO  
PLAINTIFF'S MOTION TO COMPEL  
COMPLETE DISCOVERY  
RESPONSES [DKT. 33] AND MOTION  
TO AMEND COMPLAINT [DKT. 36]**

I, Larry Altenbrun, declare and state as follows:

I am over the age of 18 and am competent to testify to the matters set forth herein. I am one of the attorneys representing defendant Pond5, Inc. ("Pond5"). I submit this Declaration in Support of Pond5's Oppositions to Plaintiff's Motion to Compel Complete Discovery Responses Regarding Pond5 Customers Who Downloaded Plaintiff's Copyrighted Works [Dkt. 33] and Plaintiff's Motion for Leave to Amend Complaint [Dkt. 36].

1. The discovery requests that are the subject matter of plaintiff's instant motion to compel were propounded upon Pond5 on December 10, 2015.

2. Attached hereto as **Exhibit 1** is a true and correct copy of relevant excerpts from Plaintiff's First Interrogatories and Requests for Production of Documents dated December 10, 2015.

DECLARATION OF LARRY E. ALTENBRUN IN SUPPORT  
OF DEFENDANT POND5 INC.'S OPPOSITIONS TO  
PLAINTIFF'S MOTION TO COMPEL DISCOVERY RESPONSES  
AND MOTION TO AMEND COMPLAINT - 1  
(3:15-cv-05696 BJR)

LAW OFFICES OF  
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1325 FOURTH AVENUE  
SUITE 1650  
SEATTLE, WASHINGTON 98101  
(206) 838-7555

3. Pond5 served answers, objections and responses to those discovery requests on January 21, 2016. Attached hereto as **Exhibit 2** is a true and correct copy of relevant excerpts from Plaintiff's First Interrogatories and Requests for Production of Documents *and Defendant Pond5's Objections, Answers and Responses Thereto*.

4. Pond5's answers and responses were not, as plaintiff seems to suggest, some sort of effort to avoid discovery until the plaintiff could "conclusively prove" his copyright case. Rather, Pond5 had no way of knowing which clips that were uploaded by ckennedy342 were owned by the plaintiff. Plaintiff had not provided Pond5 with a list of infringing content and only plaintiff possessed actual copies of works that were owned by him that he claimed were infringed upon.

5. On February 5, 2016, plaintiff disclosed 69 audio files. Attached hereto as **Exhibit 3** is a true and correct copy of is a letter accompanying the disclosure.

6. On March 7, 2016, the parties reached an email agreement whereby discovery was limited through June and focused on issues associated with Pond5's motion for summary judgment. Attached hereto as **Exhibit 4** is a true and correct copy of an email exchange between Roger Townsend and myself dated March 7, 2016.

7. Attached hereto as **Exhibit 5** is a true and correct copy of relevant excerpts from Plaintiff's First Interrogatories and Requests for Production of Documents *and Defendant Pond5's First Supplemental Objections, Answers and Responses Thereto* dated March 11, 2016.

8. Attached hereto as **Exhibit 6** is a true and correct copy of Roger Townsend's March 16, 2016 letter to Curt Feig and me.

9. Attached hereto as **Exhibit 7** is a true and correct copy of my letter dated March 17, 2016 to Roger Townsend. Counsel for plaintiff did not make a timely response to this letter.

10. Attached hereto as **Exhibit 8** is a true and correct copy of Roger Townsend's email to me dated April 10, 2016.

11. Attached hereto as **Exhibit 9** is a true and correct copy of relevant excerpts from

1 Plaintiff's First Interrogatories and Requests for Production of Documents *and Defendant Pond5's*  
2 *Third Supplemental Objections, Answers and Responses Thereto* dated. We produced copies of  
3 all audio files uploaded by ckenedy342, as part of this discovery supplement, on April 28, 2016.

4 12. Attached hereto as **Exhibit 10** is a true and correct copy of an email from Roger  
5 Townsend to me dated June 6, 2016.

6 13. On June 7, I spoke to plaintiff's counsel by telephone and let him know that he was  
7 mistaken as to his assertion that we had not disclosed audio files. I informed him that the files  
8 were disclosed some six weeks earlier.

9 14. Attached hereto as **Exhibit 11** is a true and correct copy of an email from Roger  
10 Townsend to me dated July 14.

11 15. A meet and confer was held on Tuesday, July 19, during which the parties discussed  
12 the disclosure of the identity of end users. The parties did not discuss Pond5's responses to RFP  
13 Nos. 3, 7, or 16. I was under the belief that the meet and confer pertained only to Interrogatory  
14 Number 1, and did not pertain to RFP 3, 7, or 16. Those RFPs had never before been explicitly  
15 identified by plaintiff's counsel as being subject to a motion or meet and confer.

16 16. Attached hereto as **Exhibit 12** is a true and correct copy of an email from Roger  
17 Townsend to me dated July 19, 2016. This email includes a table that identified titles of allegedly  
18 infringing tracks that included at least one sale. This is the first time that plaintiff's counsel had  
19 provided such a list to Pond5. I note that, when the email is printed out, a portion of the table is  
20 omitted. Although not shown in the printed version, the table included a total list of 87 tracks.

21 17. Attached hereto as **Exhibit 13** is a true and correct copy of my email to plaintiff's  
22 counsel dated July 21, 2016.

23 18. Attached hereto as **Exhibit 14** is a true and correct copy of an e-mail from Roger  
24 Townsend to me dated July 22, 2016.

25 19. Attached hereto as **Exhibit 15** is a true and correct copy of an e-mail from me to  
26 Nick Power and Cynthia Heidelberg dated July 25, 2016.

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20. Attached hereto as **Exhibit 16** is a true and correct copy relevant excerpts from the Declaration of Gordon Hempton dated August 3, 2016. We have omitted the exhibits from this declaration. Audio files were not produced with this declaration.

21. Attached hereto as **Exhibit 17** is a true and correct copy of my email to plaintiff's counsel on August 11, 2016.

22. Plaintiff produced audio clips, which allegedly include files that match the uploads by ckennedy342, on August 17, 2016. The production includes over 1,400 files, totaling over 60 gigabytes. My office arranged for the massive production to be duplicated professionally and sent it to Pond5 on approximately August 25.

23. Attached hereto as **Exhibit 18** is a true and correct copy of an email from Roger Townsend to me dated August 29, 2016.

24. Attached hereto as **Exhibit 19** is a true and correct copy of relevant excerpts from Plaintiff's Response to Defendants' First Set of Interrogatories and Requests for Production dated September 2, 2016.

25. Attached hereto as **Exhibit 20** is a true and correct copy of relevant excerpts from Plaintiff's **Corrected** Response to Defendants' First Set of Interrogatories and Requests for Production dated September 2, 2016.

26. Attached hereto as **Exhibit 21** is a true and correct copy of relevant excerpts from the rough draft of the transcript of the deposition of Gordon Hempton taken September 8, 2016. At the time of filing this declaration, only the rough draft was available.

27. Pond5 recently discovered that the audio files that plaintiff appears to claim to have been infringed upon appear to have originated from a collection of works located at [www.quietplanet.com](http://www.quietplanet.com). It appears as though the copyrights to these collective works were registered in July 2015. Attached hereto as **Exhibit 22** is a true and correct copy of certificates of registration for those works.

1 I declare under penalty of perjury under the laws of the United States that the foregoing is  
2 true and correct, and that this Declaration was executed on September 19, 2016, at Seattle,  
3 Washington.

4  
5 /s/ Larry E. Altenbrun  
6 Larry E. Altenbrun, WSBA #31475  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, I electronically filed the foregoing with the Clerk of the Court using the CM/CF system which will send notification of such filing to the following:

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DATED this 19th day of September, 2016.

/s/ Larry E. Altenbrun  
Larry E. Altenbrun, WSBA #31475

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